Ace Electric and Plumbing, Inc. and Shade Tree Electric of Arkansas, Inc., a single employer and Plumbers Local Union No. 68, AFL—CIO a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL—CIO. Case 16—CA—22807

November 30, 2004

SUPPLEMENTAL DECISION AND ORDER BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On October 28, 2003, the National Labor Relations Board issued an Order¹ that, among other things, ordered the Respondent to make whole employees for any losses they may have suffered as a result of the Respondent's failure to adhere to its 2002—2003 collective-bargaining agreement with the Union, until it expired on September 30, 2003. On May 4, 2004, the United States Court of Appeals for the Fifth Circuit issued its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the unit employees, on August 31, 2004, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. The compliance specification notified the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

On October 4, 2004, the Respondent's counsel, by telephone, informed a representative of Region 16 that the Respondent would not file an answer to the compliance specification. On the same date, a representative of Region 16, by telephone, advised the Respondent's counsel that a motion for default judgment would be filed if the Respondent failed to file an answer. Further, by letter dated October 11, 2004, the Respondent's counsel informed counsel for the General Counsel that the Respondent would not file an answer.

On October 18, 2004, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On October 21, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The Respondent filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the amounts of backpay due the unit employees and discriminatees are as stated in Appendices C and J of the compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment. In addition, we conclude that the contractual fringe benefit funds payments owed by the Respondent are as stated in Appendices E and K of the compliance specification, and we will order the Respondent to pay those amounts to the funds on behalf of the unit employees and the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondent, Ace Electric and Plumbing, Inc. and Shade Tree Electric of Arkansas, Inc., a Single Employer, Greenville, Texas, its officers, agents, successors, and assigns, shall make whole the individuals named in the attached Appendices A and B, by paying them the amounts of backpay opposite their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws. The Respondent also shall make whole those individuals for payments due the contractual fringe benefit funds by paying the amounts set forth in the attached Appendices C and D, plus the interest specified in the collective-bargaining agreement for delinquent contributions.

¹ The unpublished Order adopted, in the absence of exceptions, the decision of Administrative Law Judge Lawrence W. Cullen, which issued on September 9, 2003 (JD(ATL)-61-03).

² 04-60094.

In summary, the amounts owed by the Respondent are as follows:

FRINGE BENEFIT PAYMENTS: TOTAL:

\$63,509.68 \$162,000.92

BACKPAY:

\$98,491.24